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April 25, 2012

**VIA ECF**

The Honorable Brian M. Cogan  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11222

**Re: United States of America v. Thomas Gioeli, *et al.***  
**Case No. 08-cr-240 (S-6) (BMC)**

Dear Judge Cogan:

I am counsel for Thomas Gioeli in connection with the above matter. I am writing in advance of closing arguments tomorrow to remind the Court regarding the need for an instruction concerning the destruction of inmate recordings by the Metropolitan Detention Center.

The Court indicated that it would give such an instruction so the jury does not question why the defense did not produce them in connection with calls made by Dino Calabro on Nicholas Bova's phone account.

I would suggest that Court give the following instruction on this point:

You have heard testimony that Dino Calabro used three other inmate phone accounts at the Metropolitan Detention Center to make unmonitored telephone calls to others. You are instructed that by the time the government and the defense sought copies of these recordings they had been purged from the Metropolitan Detention Center's recording system in the regular course of business and therefore could not be obtained for trial through no fault of the parties.

The Honorable Brian M. Cogan

April 25, 2012

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In addition, I am about to travel to the MDC to meet with Mr. Gioeli to confirm his presence in Court tomorrow. I will only contact the Court if there is a problem in this regarding, which I do not anticipate will be the case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Adam D. Perlmutter", with a long horizontal flourish extending to the right.

Adam D. Perlmutter